

## **REMARKS**

Applicant has received and carefully reviewed the Final Office Action mailed July 2, 2007, prior to preparing this response. Currently, claims 1-15, 17-19 and 22-25 are pending, wherein claims 1-15, 17-19 and 22-25 have been rejected. Claims 1, 11, 12, 17-19, and 23 have been amended, and claim 26 has been added with this paper. Favorable consideration of the above amendments and following remarks is respectfully requested.

### ***Rejections under 35 U.S.C. § 102***

Claims 1, 12-13, 15, 23 and 25 stand rejected under 35 U.S.C. §102(b) as being anticipated by Mueller, Jr. (US 4,938,220). Applicant respectfully traverses this rejection.

Claim 1 recites that the outer layer extends from the outer surface of the marker band into the openings in the marker band and completely fills the openings. Mueller, Jr. at least fails to teach this limitation of claim 1.

Mueller, Jr., as shown in Figure 2, discloses a vent opening 24 extending longitudinally through the gap 12 of the marker 10. The presence of the vent opening 24 through the gap 12 of the marker 10 assuredly indicates that the gap 12 is not completely filled. If the gap 12 were completely filled, then there could not be a vent opening 24 extending therethrough. Mueller, Jr. expressly teaches that during formation of the catheter, a tungsten wire mandrel is temporarily placed within the gap 12 between the inner tubular member 16 and the outer tubular member 19 in order to form the vent opening 24. After the inner tubular member 16 and the outer tubular member 19 are bonded together, the mandrel is removed, leaving a through lumen forming the vent opening 24. Mueller, Jr., at lines 39-49 of column 2.

For at least this reason, Applicant asserts Mueller, Jr. fails to anticipate claim 1. Claim 1 is believed patentable over the teachings of Mueller, Jr., and withdrawal of the rejection is respectfully requested.

Claim 12 recites a coating disposed over the outer surface of the marker band, wherein the coating extends from the outer surface of the marker band toward the core member and completely fills the one or more slits of the marker band.

As discussed above, the presence of the vent opening 24 extending longitudinally through the gap 12 of the marker 10 precludes any notion that Mueller, Jr. teaches one or more slits of a marker band completely filled with a coating. For at least this reason, Applicant asserts Mueller,

Jr. does not anticipate claim 12. Claim 12, as well as claims 13 and 15 which depend from claim 12, are believed to be in condition for allowance. Withdrawal of the rejection is respectfully requested.

Claim 23 recites that a portion of the outer layer extends through the at least one opening and is in contact with the inner tubular member and completely fills the at least one opening.

As discussed above, the presence of the vent opening 24 extending longitudinally through the gap 12 of the marker 10 precludes any notion that Mueller, Jr. teaches one or more openings of a marker band completely filled with an outer layer. For at least this reason, Applicant asserts Mueller, Jr. does not anticipate claim 23. Claim 23, as well as claim 25 which depends from claim 23, are believed to be in condition for allowance. Withdrawal of the rejection is respectfully requested.

### ***Rejections under 35 U.S.C. § 103***

Claims 2-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller, Jr. in view of Nutting et al. (US 6,733,489). Applicant respectfully traverses this rejection.

Claims 2-7 depend from claim 1. As discussed above, Mueller, Jr. fails to teach each and every limitation of claim 1. The teachings of Nutting et al. fail to remedy the shortcomings of Mueller, Jr. Thus, a *prima facie* case of obviousness has not been established with the cited combination. Withdrawal of the rejection is respectfully requested.

Claims 8-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller, Jr. in view of McBroom et al. (US 6,227,108). Applicant respectfully traverses this rejection.

Claims 8-10 depend from claim 1. As discussed above, Mueller, Jr. fails to teach each and every limitation of claim 1. The teachings of McBroom et al. fail to remedy the shortcomings of Mueller, Jr. Thus, a *prima facie* case of obviousness has not been established with the cited combination. Withdrawal of the rejection is respectfully requested.

Claim 11 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller, Jr. in view of Eidenschink et al. (US 6,970,734). Applicant respectfully traverses this rejection.

Claim 11 recites that an outer layer extends from the outer surface of the marker band into the openings of the marker band and completely fills the openings.

As discussed above regarding the teachings of Mueller, Jr., the presence of the vent opening 24 extending longitudinally through the gap 12 of the marker 10 precludes any notion

that Mueller, Jr. teaches one or more slits of a marker band completely filled with a coating. The teachings of Eidenschink et al. fail to remedy the shortcomings of Mueller, Jr. As each and every limitation of claim 11 is not taught by the cited combination, a *prima facie* case of obviousness has not been established. Withdrawal of the rejection is respectfully requested.

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller, Jr. in view of Eidenschink et al. further in view of Hopkins (US 5,948,489). Applicant respectfully traverses this rejection.

Claim 14 depends from claim 12. As discussed above, Mueller, Jr. fails to teach each and every limitation of claim 12. The teachings of Eidenschink et al. and Hopkins fail to remedy the shortcomings of Mueller, Jr. Thus, a *prima facie* case of obviousness has not been established with the cited combination. Withdrawal of the rejection is respectfully requested.

Claim 24 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller, Jr. in view of Nebergall et al. (US 4,419,095). Applicant respectfully traverses this rejection.

Claim 24 depends from claim 23. As discussed above, Mueller, Jr. fails to teach each and every limitation of claim 23. The teachings of Nebergall et al. fail to remedy the shortcomings of Mueller, Jr. Thus, a *prima facie* case of obviousness has not been established with the cited combination. Withdrawal of the rejection is respectfully requested.

Claims 17-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nutting et al. in view of McBroom et al. Applicant respectfully traverses this rejection.

At page 7 in the Office Action, it was asserted that "It is the Examiner's position that Figure 6 [of McBroom et al.] shows slits in the proximal and distal ends." Applicant respectfully disagrees. As currently claimed, the one or more slits extend from the first end surface of the generally cylindrical body toward the second end surface of the generally cylindrical body. Figure 6 of McBroom et al. does not show slits extending from an end surface. The teachings of Nutting et al. fail to remedy the shortcomings of McBroom et al. Thus a *prima facie* case of obviousness has not been established with the cited combination. Withdrawal of the rejection of claims 17-19 is respectfully requested.

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ye et al. (US 2002/0156460) in view of Nutting et al. Applicant respectfully traverses this rejection. Claim 22 has been cancelled with this paper, thus rendering the rejection moot without conceding the appropriateness of the rejection.

**Conclusion**

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Richard C. Gunderson

By his Attorney,

Date: 8/31/07

A handwritten signature in black ink, reading "David M. Crompton", written over a horizontal line.

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